

ORIGINAL

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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In re :  
VITAMINS ANTITRUST LITIGATION. : MDL No. 1285  
Misc. No. 99-197 (TFH)

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**FILED**

**JUL 17 2001**

This Document Relates To: :  
LIVENGOD FEEDS, INC. et al., on their :  
own behalf and on behalf of all others :  
similarly situated, :  
Plaintiffs, :  
- against - :  
MERCK KGaA et al., :  
Defendants. :

NANCY MAYER WHITTINGTON, CLERK  
U.S. DISTRICT COURT

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**STIPULATION AND [PROPOSED] ORDER SUBSTITUTING  
PARTIES AND GRANTING DEFENDANT LONZA INC.  
LEAVE TO FILE AN AMENDED ANSWER**

IT IS HEREBY STIPULATED AND AGREED as follows:

1. This action is discontinued without prejudice as against defendant Alusuisse Lonza Group Ltd. (n/k/a Alusuisse Group Ltd.);
2. All references in the Second Consolidated Amended Class Action Complaint to Alusuisse Lonza Group Ltd. are deemed references to Lonza Group Ltd., which by this Stipulation is (a) made a party defendant and (b) waives service of process;
3. The limitations, laches or similar defenses available to Lonza Group Ltd. in this action will only be those, if any, which were available to Alusuisse Group Ltd. on

August, 3, 2000, the date on which the Court entered its Order permitting the filing of the Second Consolidated Amended Class Action Complaint by which Alusuisse Group Ltd. was made a party to this action, as though that pleading had named Lonza Group Ltd.;

4. Lonza Group Ltd. will serve its response to the Second Consolidated Amended Class Action Complaint within ten days of the Court's approval of this Stipulation;

5. Except as expressly provided herein, all defenses of Lonza Group Ltd. are preserved; and,

6. Defendant Lonza Inc.'s Amended Answer to the Second Consolidated Amended Class Action Complaint, annexed as Exhibit A, will deemed served and filed upon the Court's approval of this Stipulation.



Dated: July 12, 2001

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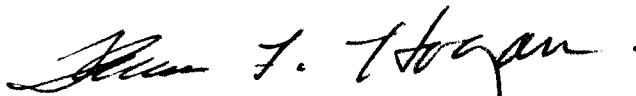


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*Attorneys for defendants Lonza Inc., Lonza Group  
Ltd. and Alusuisse Group Ltd. (f/k/a Alusuisse  
Lonza Group Ltd.)*

SO ORDERED, July 14, 2001:



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Hon. THOMAS F. HOGAN  
United States District Judge

**Exhibit A**

***Lonza Inc.'s Amended Answer to the Second  
Amended Complaint As Modified  
By the Stipulation of July 12, 2001***

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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own behalf and on behalf of all others :  
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Plaintiffs, :  
  
- against - :  
  
MERCK KGaA et al., :  
  
Defendants. :

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**DEFENDANT LONZA INC.'S AMENDED ANSWER AND  
AFFIRMATIVE DEFENSES TO THE SECOND AMENDED  
CONSOLIDATED CLASS ACTION COMPLAINT,  
AS MODIFIED BY THE STIPULATION OF JULY 12, 2001**

Defendant Lonza Inc., by its attorneys, Mayer, Brown & Platt, for its  
Amended Answer to the Second Consolidated Amended Class Action Complaint, states as  
follows:

Except as expressly stated below, Lonza Inc. answers and responds only to  
those allegations that are directed toward it. To the extent a response to allegations directed  
toward an entity other than Lonza Inc. is required, Lonza Inc. states that it is without

sufficient knowledge or information to form a belief concerning the truth of the allegations in the Complaint directed toward such entities and on that basis denies them.

### **ANSWER**

1. Lonza Inc. denies the allegations contained in paragraph 1.
2. Lonza Inc. denies the allegations contained in paragraph 2.
3. Lonza Inc. denies the allegations contained in paragraph 3.

### **Jurisdiction and Venue**

4. Lonza Inc. denies the allegations contained in paragraph 4, except admits that plaintiffs purport to bring this action against defendants under Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15, 26.

5. Lonza Inc. denies the allegations contained in paragraph 5, except admits that plaintiffs seek to invoke jurisdiction pursuant to 28 U.S.C. § 1337 and 15 U.S.C. §§ 1, 15, 22, and 26.

6. Lonza Inc. denies the allegations contained in paragraph 6, except admits that plaintiffs seek to invoke venue pursuant to 28 U.S.C. § 1391(b) and (c) and 15 U.S.C. §§ 15, 22, and 26.

7. Lonza Inc. denies the allegations contained in paragraph 7.

### **Parties**

8. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 and on that basis denies them.

9. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 and on that basis denies them.

10. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 and on that basis denies them.

11. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 and on that basis denies them.

12. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 and on that basis denies them.

13. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 and on that basis denies them.

14. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 and on that basis denies them.

15. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 and on that basis denies them.

16. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 and on that basis denies them.

17. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 and on that basis denies them.

18. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 and on that basis denies them.

19. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 and on that basis denies them.

20. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 and on that basis denies them.

21. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 and on that basis denies them.

22. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 and on that basis denies them.

23. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23 and on that basis denies them.

24. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24 and on that basis denies them.

25. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25 and on that basis denies them.

26. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 26 and on that basis denies them.

27. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27 and on that basis denies them.

28. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28 and on that basis denies them.

29. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29 and on that basis denies them.

30. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30 and on that basis denies them.

31. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 31 and on that basis denies them.



32. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 32 and on that basis denies them.

33. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 33 and on that basis denies them.

34. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 34 and on that basis denies them.

35. Lonza Inc. denies the allegations contained in paragraph 35, except admits that Lonza Group Ltd. is a Swiss corporation whose subsidiaries and affiliates' businesses include the distribution and sale of vitamin B<sub>3</sub>.

36. Lonza Inc. denies the allegations contained in paragraph 36, except admits that Lonza AG is a Swiss corporation and that Lonza AG and certain of its affiliates participate in the distribution and sale of vitamin B<sub>3</sub>.

37. Lonza Inc. denies the allegations contained in paragraph 37, except admits (i) that Lonza Inc. is a New York corporation with its principal place of business in Fair Lawn, New Jersey; (ii) that Lonza Inc. is engaged in the distribution and sale of vitamin B<sub>3</sub> in the United States; and (iii) that Lonza Inc., through intermediate holding companies, is a subsidiary of Lonza Group Ltd. Lonza Inc. objects to the use of the term "Lonza" to refer collectively to Lonza AG, Lonza Inc., and Lonza Group Ltd. as vague and ambiguous. Lonza Inc. answers on behalf of itself alone in responding to allegations in the complaint regarding "Lonza." Lonza Inc. is not answering, *i.e.*, making any admissions or denials, on behalf of Lonza AG or Lonza Group Ltd.

38. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38 and on that basis denies them.

39. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 39 and on that basis denies them.

40. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 40 and on that basis denies them.

41. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 41 and on that basis denies them.

42. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 42 and on that basis denies them.

43. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 43 and on that basis denies them.

44. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 44 and on that basis denies them.

45. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 45 and on that basis denies them.

46. Lonza Inc. denies the allegations contained in paragraph 46.

47. Lonza Inc. denies the allegations contained in paragraph 47.

48. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 48 and on that basis denies them.

49. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 49 and on that basis denies them.

50. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 50 and on that basis denies them.

51. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 51 and on that basis denies them.

52. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 52 and on that basis denies them.

53. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 53 and on that basis denies them.

54. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 54 and on that basis denies them.

55. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 55 and on that basis denies them.

56. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 56 and on that basis denies them.

57. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 57 and on that basis denies them.

58. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 58 and on that basis denies them.

59. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 59 and on that basis denies them.

60. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 60 and on that basis denies them.

61. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 61 and on that basis denies them.

62. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 62 and on that basis denies them.

63. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 63 and on that basis denies them.

64. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 64 and on that basis denies them.

65. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 65 and on that basis denies them.

#### **Class Action Allegations**

66. Lonza Inc. admits that plaintiffs purport to bring this claim as a class action under Federal Rule 23(b)(3) on behalf of a class, but denies that any such class is appropriate for certification under Federal Rule 23. Lonza Inc. denies the remaining allegations contained in paragraph 66.

67. Lonza Inc. denies the allegations contained in paragraph 67.

68. Lonza Inc. denies the allegations contained in paragraph 68.

69. Lonza Inc. denies the allegations contained in paragraph 69.

70. Lonza Inc. denies the allegations contained in paragraph 70.

71. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 71 and on that basis denies them.

72. Lonza Inc. denies the allegations contained in paragraph 72.

73. Lonza Inc. denies the allegations contained in paragraph 73.

74. Lonza Inc. denies the allegations contained in paragraph 74.

### **Trade and Commerce**

75. Lonza Inc. denies the allegations in paragraph 75, except admits that Lonza Inc. sells vitamin B<sub>3</sub>.

76. Lonza Inc. denies the allegations contained in paragraph 76.

77. Lonza Inc. denies the allegations contained in paragraph 77.

78. Lonza Inc. denies the allegations contained in paragraph 78.

79. Lonza Inc. denies the allegations contained in paragraph 79.

80. Lonza Inc. denies the allegations contained in paragraph 80, except admits that Lonza Inc. sells vitamin B<sub>3</sub> in interstate commerce.

81. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 81 and on that basis denies them.

82. Lonza Inc. denies the allegations contained in paragraph 82, except admits that Lonza Inc. sells vitamin B<sub>3</sub> in interstate commerce.

83. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 83 and on that basis denies them.

84. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 84 and on that basis denies them.

85. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 85 and on that basis denies them.

86. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 86 and on that basis denies them.

87. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 87 and on that basis denies them.

**Answers to “Factual Background” Allegations**

88. Lonza Inc. denies the allegations contained in paragraph 88.

89. Lonza Inc. denies the allegations contained in paragraph 89.

90. Lonza Inc. lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 90 and on that basis denies them.

91. Lonza Inc. denies the allegations contained in paragraph 91.

92. Lonza Inc. denies the allegations contained in paragraph 92.

93. Lonza Inc. denies the allegations contained in paragraph 93.

94. Lonza Inc. denies the allegations contained in paragraph 94.

95. Lonza Inc. denies the allegations contained in paragraph 95.

96. Lonza Inc. denies the allegations contained in paragraph 96.

97. Lonza Inc. denies the allegations contained in paragraph 97.

98. Lonza Inc. denies the allegations contained in paragraph 98.

99. Lonza Inc. denies the allegations contained in paragraph 99.

100. Lonza Inc. denies the allegations contained in paragraph 100.

101. Lonza Inc. denies the allegations contained in paragraph 101.

102. Lonza Inc. denies the allegations contained in paragraph 102.

103. Lonza Inc. denies the allegations contained in paragraph 103.

104. Lonza Inc. denies the allegations contained in paragraph 104.

### **AFFIRMATIVE DEFENSES**

#### **First Affirmative Defense**

Lonza Inc. denies all allegations not specifically admitted herein.

#### **Second Affirmative Defense**

This Court lacks personal jurisdiction over Lonza Inc.

#### **Third Affirmative Defense**

The Complaint fails to state a claim against Lonza Inc. upon which relief can be granted.

#### **Fourth Affirmative Defense**

The Complaint fails to plead its conspiracy and antitrust claims as to Lonza Inc. with sufficient particularity.

#### **Fifth Affirmative Defense**

Plaintiffs' claims are barred by applicable statutes of limitations.

#### **Sixth Affirmative Defense**

Plaintiffs' claims are barred by the doctrine of laches.

#### **Seventh Affirmative Defense**

Plaintiffs' claims are barred by the doctrine of estoppel.

#### **Eighth Affirmative Defense**

Plaintiffs' claims are barred by the doctrine of waiver.

#### **Ninth Affirmative Defense**

Plaintiffs' claims are barred by plaintiffs' lack of standing.

#### **Tenth Affirmative Defense**

To the extent plaintiffs state claims for alleged injuries arising from indirect purchases of vitamins and vitamin products from Lonza Inc., plaintiffs lack standing to sue under the federal antitrust laws.

#### **Eleventh Affirmative Defense**

To the extent plaintiffs allege any overcharges as a result of the purported conspiracy, plaintiffs passed those alleged overcharges on to their customers and accordingly lack standing.

#### **Twelfth Affirmative Defense**

Plaintiffs' claims are barred because plaintiffs have not sustained any cognizable injury or antitrust injury by reason of any actions of Lonza Inc.

#### **Thirteenth Affirmative Defense**

Plaintiffs' claims are barred because plaintiffs' class fails the requirements of Rule 23(a) of the Federal Rules of Civil Procedure, including, but not limited to, insufficient questions of law or fact that are common to the class.

#### **Fourteenth Affirmative Defense**

Plaintiffs' claims are barred because plaintiffs' class fails the requirements of Rule 23(b) of the Federal Rules of Civil Procedure. Questions of law or fact common to the class do not predominate over questions affecting only individual members and a class action



is not superior to other available methods for the fair and efficient adjudication of the controversy.

**Fifteenth Affirmative Defense**

Plaintiffs have failed to mitigate their damages.

**Sixteenth Affirmative Defense**

Lonza Inc. adopts by reference any applicable defense pleaded by any other defendant not expressly set forth herein.

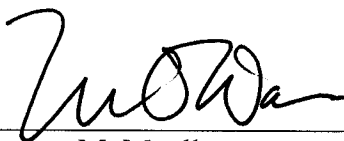
**Seventeenth Affirmative Defense**

Lonza Inc. reserves the right to assert other defenses as discovery proceeds.

WHEREFORE, Lonza Inc. respectfully requests that judgment be entered dismissing the Complaint as against Lonza Inc. with prejudice and providing Lonza Inc. with such other and further relief as this Court deems just and proper.

Dated: New York, N.Y.  
July 12, 2001

MAYER, BROWN & PLATT

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**CERTIFICATE OF SERVICE**

The undersigned member of the Bar of this Court hereby certifies that on July 12, 2001, he served the Stipulation and [Proposed] Order Substituting Parties and Granting Defendant Lonza Inc. Leave to File an Amended Answer (with Annexed Defendant Lonza Inc.'s Amended Answer and Affirmative Defenses to the Second Amended Consolidated Class Action Complaint, as Modified by the Stipulation of July 12, 2001), by uploading an electronic version thereof to the Verilaw Web site, in accordance with the Order Regarding Electronic Service entered May 17, 2000.



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